

(15,540.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 350.

SANTIAGO AINSA, ADMINISTRATOR, WITH WILL ANNEXED, OF FRANK ELY, DECEASED, APPELLANT,

vs.

THE NEW MEXICO AND ARIZONA RAILROAD COMPANY.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF ARIZONA.

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a In the District Court of the First Judicial District of the Territory of Arizona in and for the County of Pima.

SANTIAGO AINSA, Administrator, with the Will Annexed, of Frank Ely, Deceased, Plaintiff,	} Transcript.
<i>vs.</i>	
THE NEW MEXICO AND ARIZONA RAILROAD COMPANY, a Corporation, Defendant.	

Transcript demanded by Selim M. Franklin and Rochester Ford, attorneys for plaintiff, June 8, 1893.

Transcript delivered to Selim M. Franklin and Rochester Ford, attorneys for plaintiff, June 14, 1893.

BREWSTER CAMEREN, *Clerk*,
By CHARLES BOWMAN,
Deputy Clerk.

1 In the First Judicial District Court, Territory of Arizona, in and for the County of Pima.

SANTIAGO AINSA, Administrator, with Will Annexed, of Frank Ely, Deceased, Plaintiff,	}
<i>vs.</i>	
THE NEW MEXICO AND ARIZONA RAILROAD COMPANY, a Corporation, Defendant.	

I.

Plaintiff complains of defendant and alleges:

II.

That plaintiff is a resident of the city of Tucson, county of Pima, Territory of Arizona.

That the said Frank Ely in his lifetime made and published his last will, whereby he appointed Clara D. Ely, Louis B. Ely, and Robert C. Ely executors thereof; that on the 14th day of February, 1890, at the city of St. Louis, State of Missouri, said Frank Ely died.

That on the 24th day of February, 1890, at the said city of St. Louis, said will was proved and admitted to probate in the probate court of the city of St. Louis, in the said State of Missouri; that thereafter and on the 23rd day of November, 1891, at Tucson, Arizona, the said will was proved and admitted to probate in

2 the probate court of Pima county, Arizona Territory; that as the said executors therein named were non-residents of the Territory of Arizona and were not qualified to act as executors in the Territory of Arizona, this plaintiff was, on the 23rd day of November, 1891, duly appointed by said probate court the administrator, with will annexed, of the said Frank Ely, deceased; that thereupon this plaintiff duly qualified and entered upon the discharge of his duties as administrator, and that said letters of administration have not been revoked.

III.

That The New Mexico and Arizona Railroad Company, defendant herein, is a railroad corporation duly organized and existing under and by virtue of the laws of Arizona and doing business in the said county of Pima.

IV.

That plaintiff is the owner in fee of all that certain piece or parcel of land granted by the Mexican authorities to Leon Herreros on the 15th day of May, 1825. Said grant is known as and called the Rancho San Jose de Sonoita, and the land is situated in the Sonoita valley, in the county of Pima, Arizona Territory, about twenty-five miles southeast from the old town of Tubac and some six miles northeast from the Calabasas ranch, in a canyon formed by the slopes of the Santa Rita and the Patagonia mountains. Said land is more particularly bounded and described as follows, according to the calls of the survey of said rancho as made by the Government of Spain on June 26th and 27, 1821, as appears from the expediente or patent to said tract of land, herewith filed and made part of this complaint:

3 Taking as a center the walls of the San Jose de Sonoita mission, there were measured in a northeasterly direction sixty-three Spanish cords, which ended a little below a spring at the foot of some low hills, a chain of mountains of a valley which goes on and turns to the east, where was placed a heap of stones as a monument.

From this monument there were measured to the southeast twenty-five cords, which, going up the valley, ended on the left side of a chain of hills and at the foot of one of them whose slope was covered with oak trees, and on the top was placed a heap of stones as a monument; and on the opposite side there were measured also twenty-five cords on a high white hill, covered with grass, distinguished by this reason from the others near it, which are part of the Santa Rita mountains, and on the top of which hill was placed a heap of stones as a monument.

Returning to the center, the cord was extended in the direction of the east, and there were measured twenty-five cords, ending in a high mountain located on this side on a somewhat high hill covered with many oak trees, where a heap of stones was put in sign of a monument.

Returning to the center, the cord was laid towards the west and twenty-five cords were measured, ending on the main road to Tubac, on a little hill called the "Cazadero," on which was placed a heap of stones as a monument.

Returning to the center, the cord was extended towards the south all along down the canyon, by which there were measured and counted three hundred and twelve cords, that ended in the same canyon at the dropping down of a table-land on the main
4 road at a place called the "First Ford," with the direction looking toward the west, on account of the turn which the said canyon had made, and there was put a heap of stones as a

monument and as heads or corners; there were measured on the right side twenty-five cords to the other side of a ledge that ends in high rolling boulders in a hill that forms a little valley, where I ordered to be placed a heap of stones as a monument; and on the left side there were measured by the surveyors twenty-five cords to the first of two little hills almost exactly alike one to the other, which are named "The Twins," which serves as a monument, as these are distinguished from all the other hills which surround them, and on the summit was placed a cross. This end of the survey, more or less, is about two leagues off from the Calabasas ranch at the nearest place.

And in view of the suggestion made by the claimant to reduce the number of cords actually measured so much as might be calculated to be in fact in excess of the true measurement, by reason of the many turns of the canyon over which the survey was made, as it could not be carried on straight, twenty-five cords were deducted out of the three hundred and twelve cords measured in the last survey down the canyon, the claimant consenting thereto as just. The survey was calculated to be two hundred and eighty-seven cords, with which this survey was finished.

V.

That the above-named defendant claims an estate or interest in and to said above-described land and premises adverse to this plaintiff; that the said claim of the said defendant is without any
 5 right whatsoever, and the said defendant has not any estate, right, title, or interest whatever in said lands or premises or any part thereof.

Wherefore plaintiff prays:

First. That the said defendant be required to set forth the nature of its claim, and that all adverse claims of the defendant may be determined by a decree of this court.

Second. That by said decree it be declared and adjudged that the defendant has no estate or interest whatever in or to said lands and premises or in or to any part thereof, and that the title of plaintiff is good and valid.

Third. That the defendant be forever enjoined and debarred from asserting any claim whatever in or to said land or premises, or to any part thereof, adverse to the plaintiff, and for such and further relief as to this honorable court shall seem meet and agreeable to equity and for his costs of suit.

ROCHESTER FORD AND
 SELIM M. FRANKLIN,

Attorneys for Plaintiff.

Endorsed: Filed June 1, at 2.45 p. m., 1892. Brewster Cameron, clerk, by Chas. Bowman, deputy clerk.

6

Defendant's Entry of Appearance and Stipulation.

Title of Court and Cause.

It is hereby stipulated and agreed by and between the respective parties in the above-entitled cause as follows:

1. The defendant hereby enters its appearance in the above-entitled cause, waiving service of any process therein.

2. Said defendant shall have ninety (90) days from the date hereof within which to plead to this action.

3. And in consideration of the dismissal as to this defendant, at its request, of a certain action now pending in the above-entitled court, wherein this plaintiff is plaintiff and this defendant and others are defendants, and being the same cause of action as set forth in the complaint herein, which dismissal is for the purpose of giving this defendant additional time to prepare its defense or effect a compromise of this suit, it is further stipulated and agreed that the defendant herein shall, and herein does, waive any right which it may have to plead the statute of limitations as a bar or otherwise to plaintiff's cause of action as set forth in his complaint herein.

And it is further stipulated and agreed that the evidence which may be introduced by plaintiff in the trial of the said cause, which is to be dismissed as to this defendant, shall be deemed and considered and taken as evidence in this cause, in the trial thereof, as though the said evidence had been originally introduced in this cause.

7

SELIM M. FRANKLIN,
ROCHESTER FORD,

Attorneys for Plaintiff.

WILLIAM HERRING,

Attorney for Defendant.

Endorsed: Filed June 4, 1892. Brewster Cameron, clerk, by Chas. Bowman, deputy clerk.

8

Answer.

Title of Court and Cause.

The defendant, The New Mexico and Arizona Railroad Company, now comes and answers the complaint of the plaintiff as follows:

This defendant denies that the plaintiff is the owner in fee or otherwise of the premises described in the complaint or of any part thereof.

Denies that said lands were granted by the Mexican authorities to Leon Herreros on the 15th day of May, 1825, or at any other time or at all, or that said lands were surveyed by the government of Spain on June 26 and 27, 1821, or at any time or at all.

Denies that the estate or interest of this defendant in the lands mentioned in the complaint is without any right, or that this de-

defendant has not any estate, right, title, or interest in said lands or in any part thereof.

This defendant alleges that it is the owner and in possession and entitled to the possession of that portion of the lands and premises described in the complaint which constitutes its road-bed, right of way, track, stations, station-houses, and all appurtenances which are held, used, or claimed as its railroad property on and across the said lands in the complaint mentioned and forming part of the New Mexico and Arizona railroad, constructed and operated from Benson, in Cochise county, to Nogales, in Pima county, and this defendant does not claim and never has claimed any estate or interest in any other part or portion of the lands and premises described in the complaint.

That its said road-bed, right of way, stations, and all lands forming part of its said railroad property, so far as the same is within the boundary of the lands described in the complaint, was acquired from the owners and occupants thereof, so far as the same was owned or occupied as private property, and as to the remainder thereof the same was public lands of the United States, and said right of way over said public lands was granted and secured to this defendant under and in pursuance of the laws of the United States granting to railroads a right of way over its public lands, and this defendant entered upon said lands and constructed its said railroad thereon in, to wit, the year 1881, and ever since last-mentioned date this defendant has been and still is in the open, notorious, and exclusive possession thereof, claiming, holding, and using the same, and as for the purpose of its said railroad, adversely to all the world, under a claim of right and title thereto, and during all of said time has paid the taxes thereon.

Wherefore this defendant prays to be hence dismissed with its costs, and that the said plaintiff and all persons claiming under him be perpetually enjoined from asserting any right or title to this defendant's right of way, road-bed, stations, station grounds, or other property of this defendant within, upon, or across the said alleged grant, and for such other or further relief as defendant may be entitled to.

WILLIAM HERRING,
Attorney for Defendant.

Endorsed: Filed June 3, 1893. Brewster Cameron, clerk, by Charles Bowman, deputy clerk.

10 In the District Court of the First Judicial District of the Territory of Arizona in and for the County of Pima.

SANTIAGO AINSA, Administrator, with the Will Annexed, of Frank Ely, Deceased, Plaintiff,	} No. 2096.
vs. THE NEW MEXICO AND ARIZONA RAILROAD COMPANY, a Corporation, Defendant.	

Agreed Statement of Facts.

Come now the parties hereto, by their respective counsel, and in accordance with the provisions of paragraph 759 of chapter 11 of title XV of the Revised Statutes of Arizona of 1887, submit this controversy to the court, a jury being expressly waived, upon the following agreed statement of facts, upon which judgment shall be rendered as in other cases; which facts it is stipulated may be taken as though they were offered in evidence in the case, and to be as and for such evidence:

I.

That the following Spanish or Mexican grant was made, executed, and delivered to the grantee named therein at the time and place and by the persons and officials when, where, and by whom it purports to have been signed, made, executed, and delivered, and that the plaintiff herein is the vendee and assignee of and has
11 acquired all the right, title, and interest of the original grantee thereof, and that the following is a correct translation thereof:

12 *Translation.*

Title deeds of a grant of one sitio and three-fourths of another sitio surveyed on behalf of Don Leon Herreros, resident of Tubac, situated in a place called San Jose de Sonoita.

[Seal for the years 1825-1826.]

Juan Miguel Riesgo, commissary general of the treasury, public credit, and war of the State of the Occident:

Inasmuch as article 81 of the royal ordinances of intendentes of December 4th, 1786, confers on these magistrates the power of surveys, sales, and settlements of lands within their respective districts, the purport of which in words is as follows, to wit:

Article 81. The intendentes shall also act as special judges in matters and cases which take place within the limits of their respective provinces in regard to the sale, settlement, and apportionment of the public lands the holders of which and those who desire the acquisition of new grants to them may obtain their titles and formulate their petition before the said intendentes, so that these matters, having consulted with the attorney of the royal treasury, whom they shall appoint, they (the intendentes) shall pass upon and

determine them according to the approval of their customary secretaries, and to receive the appeals of the "junta superior de hacienda," or to report to it in case the intendentes interpose objections, sending along the original documents when they are completed

13 for obtaining title in order that, being examined by it, may return them or grant title, if there be no fault found, or that before issuing the title the proceedings found incomplete may be corrected, whereby great inconvenience might occur, and the proper confirmation may be made, which the junta superior shall issue in its proper time, as well as the intendente, their substitute and representatives, in conformity to the royal instructions of October 15, 1754, in whatever may not be in contradiction to this, without losing sight of the wise provisions of the laws either in it or that of the laws 9, title 12, libro 4.

In virtue thereof, and proceedings being instituted on behalf of Don Leon Herreros, a resident of the presidio of Tubac, before the intendente, asking for the lands in a place known as Sonoita, situated in that jurisdiction, his petition was accepted, giving the necessary power to the commander of the company furnishing him with the accompanying writs, and his act of obedient being as follows, to wit:

Sr. intendente governor:

Leon Herreros, resident of the military post of Tubac, with all due respect appeared before you and said that to the east of the said post, about eight leagues distant from it, more or less, is situated a place known as Sonoita, which had been anciently an Indian town and was abandoned by reason of the incursions of the Apache Indians, being situated very near their customary hiding places, and, nevertheless, that even now the locality is exposed to the same danger, having to provide a place to herd some of my cattle and having no lands where to do it, in the royal name of his majesty I

14 locate in the aforesaid place two "sitios" of land, the same which I promise to stock with cattle and horses, being ready to pay to his majesty the just price in which they may be valued.

Wherefore I humbly ask and pray of your honor to order to have the same surveyed, and to institute all the other proceedings necessary to obtain title and the confirmation of the same. I swear that I do not act with a bad intent, and all that is necessary, &c.

For Leon Herreros, JOSE M. SOTOLO.

Arizpe, 29th of May, 1821.

Presentation acknowledged and petition granted without prejudice to third parties. Should any others have a better right, the commander of the company stationed at Tubac shall proceed to the surveying of the land located by the petitioner, summoning adjoining owners. He will appoint experts to appraise the land at its just value, which he will publish for thirty consecutive days, asking bidders, and execute all the proceedings required by law till the "expediente" is completed to a condition to be remitted in proper

order for further proceedings in this special tribunal, so as to issue the corresponding grant.

CORDERO.

Tubac, June 22, 1821.—It is hereby ordered that what is commanded in the foregoing decree by the Brigadier General Cordero, governor and intendente of the province *and* Sinaloa, be carried into effect, and for that purpose, the interested party being notified as well as the adjacent owners, if there be any, and accompanied by the necessary officials, who shall be appointed for the purpose, I will proceed to the ancient, abandoned place of Sonoita, in order to survey the two sitios claimed. Don Ygnacio Elias Gonzales, lieutenant commander and subdelegate of the military post of the company of Tubac, to that end I so determined, ordered, and signed, with the assistant witnesses, with whom I act in default of the regular clerks.

YGNACIO ELIAS GONZALES.

Ass't: JOSE M. SOTOLO.

Ass't: PEDRO RAMIEREZ.

Forthwith the said subdelegate proceeded to nominate the legal officials, to wit, the citizen Manuel de Leon, Jose Ma. Sotolo, and Don Jose Monreal, who, upon their oath, promised to perform well and faithfully their mission, and, after taking a general view of the place and the limits of adjacent properties, executed the survey, as appears from the following report:

In the abandoned place of San Jose de Sonoita, on the 26th day of June, 1821, I, the said lieutenant commander and subdelegate of the military post and company of Tubac and its jurisdiction, in order to make the survey of the land claimed by Don Leon Herberos, of the vicinity, delivered to the appointed officials a well twisted and stretched cord, and in my presence was delivered to them a Castilian "vara," on which were measured and counted on said cord fifty regulation "varas," and, this being done, at each end were tied poles, and standing on the spot assigned by the claimant as the center, which was in the very walls of the already mentioned Sonoita, there were measured in a northeasterly direction sixty-three cords, which ended a little beyond a spring at the foot of some low hills, a chain of mountains of a valley which goes on and turns to the east, where was placed a heap of stones as a monument; and, being about to return to the center, the claimant expressed a desire that the survey should be continued down the "cañon" until the two sitios should be completed; that on each side we should survey to him only twenty-five cords, in view that, if the survey should extend further, by reason of the broken-up condition of the country and the rocky hills in sight, such land would be useless to him, saying at the same time, that continuing the measurement along the "cañon" (because it was impossible to go in any other direction on account of the roughness of the ground), by reason of the many turns that had to be made, so many cords should be deducted from the total number measured as would be

calculated to result in excess of the real length measured, taken on a straight line, and considering his demand reasonable I ordered the continuation of the survey as follows, to wit:

From the place where the monument was placed there was measured to the southeast twenty-five cords, which, going up the valley, ended on the left side of a chain of hills and at the foot of one of them whose slope was covered with oak trees, and in the top was placed a heap of stones as a monument, and on the opposite side there was estimated also twenty-five cords on a high white hill covered with grass, distinguished from the others near it, which are part of the Santa Rita mountains, and on the top I ordered a heap of stones to be placed as a monument. In this way the measurement was finished at this end of the survey, with its proper corners and heads. Turning to the center, the cords was measured in the direction of the east, and there were measured and counted twenty-five cords, ending before reaching a high mountain located on this

side on a somewhat high hill covered with many oak trees,
17 where I ordered to be put a heap of stones as a monument.

Returning to the center, the cord was laid towards the west and twenty-five cords were measured, ending on the main road to Tubac, on a little hill called the "Casadero," in which was placed a heap of stones as a monument. Whereupon the survey was suspended, as it was late, to continue it tomorrow morning. And to attest it I note it down in the proceeding, which was signed with me by my assistant witnesses and the appointed officers, who could write, and the claimant did not sign because he said he could not write; all of which I certify.

IGNACIO ELIAS GONZALES.
MANUEL LEON.
JOSE M. SOTOLO.

Assistant: IGNACIO ORTIZ.

Assistant: THOMAS ORTIZ.

On the aforesaid place of Sonoita, on the 27th day of the said month and year, I, the said lieutenant commander, in order to continue the survey suspended yesterday, accompanied by the officers appointed, taking as a starting point the place designated as center, the cord was extended towards the south all along down the "cañon," and by which there were measured and counted three hundred and twelve cords, that ended in the same "cañon," upon going down a hill on the main road, at a place called the First Ford, with the direction looking towards the west, on account of the turn which the said "cañon" had made, and there was put a heap of stones as a monument and as heads or corners; there was estimated on the side twenty-five cords to the other side of a ledge that ends in high rolling boulders, in which a hill that forms a little valley, where I ordered to be placed a heap of stones as a monument, and on the left side there was estimated by the surveyors twenty-five cords to the first of two

hills almost exactly alike one to the other, which are named The
18 Twins, which serves as a monument, as these are distinguished from all the other hills which surround them, and on the

summit I ordered to be placed a cross. This end of the survey, more or less, is about two leagues off from the Calabassas ranch at the nearest place, and the other end only adjoins with places frequented by the enemies as they come to rob and invade the country, and, in view of the suggestion made by the claimant to reduce the number of cords actually measured, so much as might be calculated to be, in fact, in excess of true measurement, by reason of the many turns of the cañon over which the survey was made, as it could not be carried on straight, I appointed for that purpose Lieutenant Don Manuel Leon and the citizen Don Jose Ma. Sotolo, who were unanimous of the opinion to deduct twenty-five cords out of the three hundred and twelve cords measured in the last survey down the cañon, the claimant consenting thereto as just. The survey was calculated to be two hundred and eighty cords with which this survey was finished, resulting from it one "sitio" and three-fourths of another "sitio" claimed by Don Herreros for raising stock and for farming purposes. Being put in possession and he being satisfied with the said survey, he was admonished that he should at the proper time build up his monument in stone and mortar as is provided, and, as he could not write, I signed myself with the appointed officers who could and the assisting witnesses in default of the regular clerk.

YGNACIO ELIAS GONZALES.
MANUEL DE LEON.
JOSE MA. SOTOLO.

Assistant: YGNACIO ORTIZ.
Assistant: TOMAS ORTIZ.

19 Immediately thereafter the commission proceeded to appraise the land which, by the superior regulations laid down on the subject, was valued at one hundred and five dollars for the one sitio and three-quarters of another, and with which value was published thirty consecutive days for bidders. None appearing, the claimant presented himself with the "expediente" at this office, which, by decree of October 21, I sent to the "promotor fiscal," whose answer was as follows, to wit:

Honorable governor intendente:

The "promotor fiscal" of this treasury has examined carefully the expediente of the lands surveyed in favor of Don Leon Herreros, resident of the military post of Tubac, by the commissioner, Don Elias Ygnacio Gonzales, lieutenant commander of the post, in the place called San Jose de Sonoita, in that jurisdiction, from which resulted one sitio and three-fourths of another for raising stock and horses, valued at sixty dollars each sitio, which sums up one hundred and five dollars, as it has running water and some pieces of land fit for cultivation, and, having published the land for thirty consecutive days, there was no bidder to offer over the appraisement, and thereupon the commissioner proceeded to inquire as to the three qualifications required, by which it appeared that the claimant had the means to settle and keep occupation of the land. Wherefore the subscriber

asks if you consider it advisable to order the three publications at this capital calling for bidders, and to auction off the land to the one which offers the highest price, understanding that he will have to pay to the national treasury the whole value of the land, eighteen per cent. for forwarding, two per cent. for the general fund, and three dollars for the officials of the extinguished treasury department, giving him the necessary receipt of credit for the sum total, which must be joined to this "expediente," and send report to the "junto superio de hacienda publico," to be advised as to what it shall determine; nevertheless you may do as you think best.

Arizpe, November 7th, 1821.

FRANCISCO PERES.

And this "commissario general" being satisfied with the foregoing petition, the three publications were made, which took place on the 8th, 9th, and 10th days of November, 1821, the one sitio and three-fourths of another being solemnly auctioned off in favor of the claimant, Don Leon Herreros. Immediately notice of this transfer being added to the original "expediente," it was given to his agent, who, answering in writing he was satisfied with the proceedings, that he should be allowed a settlement with the treasury, and that the corresponding title and confirmation should be issued to his principal.

In virtue whereof the following order was issued:

In the city of Arizpe, on the 12th day of November of the year 1821, the hon. intendente *pro tempore* (interino) of this province of Sonora and Sinaloa, Don Ygnacio Bustamente, having examined the documents of the survey appraisement, publication, auction and sale of the lands of the place called San Jose de Sonoita, situated within the jurisdiction of the military post of Tubac and containing one sitio and three-fourths of another sitio, for raising stock in favor of Don Leon Herreros, of the same place, the answer given by the agent, as it appears by the foregoing instrument, with everything else that was necessary, said that, declaring, as I do declare, the said proceedings to be in good order and form, and allowing, as I now allow, that settlement should be made with the national treasury for the said public lands by the said Don Leon Herreros, I should order that notice be given to his agent to proceed to deliver to the treasury of this city the sum of \$116.00 2r. 5gr. in the following fashion: \$105.00 as value of said land, \$6 1r. 7gr. as land fee, and its 18 per cent., \$2 10gr. for the two per cent. for the general fund, and three dollars as fees of the extinguished account of the same treasury. The certificate thereof being inserted in this expediente, the same shall be reported to the "junta superior hacienda" for its approbation or to make such disposition as to them may appear best, and by this instrument he so provided, ordered, and signed with the assisting witnesses in default of the regular clerk, which he has not, as he should, by law.

YGNACIO DE BUSTAMENTE.

Assistant: JOSE MA. MENDOZA.

Assistant: JOAQUIN ELIAS GONZALES.

The agent being notified of this order, he proceeded to make the payment ordained, as appears by the certificate adjoined to the "expediente," in which state it remains in the keeping of the general office (commissario general) as a perpetual record.

Wherefore, using the powers granted to me by the act 81, ordinances of intendentes, and pursuant to the provisions of the Royal Institute of Oct. 15, 1754, which is quoted in the same article, by these presents, in the name of the sovereign nation of Mexico, I grant and confirm title to one sitio and three-fourths of another which has been surveyed in favor of the said Don Leon Herreros, citizen of Tubac, in which district the land is situated, which, by way of sale and as qualified by the provisions of the law, I grant, give, adjudicate, for himself, his sons, heirs, and successors, with all its rights of ingress and egress, 22 uses, customs, servitudes, woods, forests, grasses, waters, watering places for cattle (aberboderos), and other appurtenances, with the condition that he shall occupy and cultivate said land to the utmost of his ability, without allowing it to be totally abandoned for one entire year, and should there be any other person asking to settle upon it, in such event, previous notice being given, it will be sold to the highest bidder, adding the further condition that Don Leon Herreros shall confine himself to his own limits and bounds described in the notes of survey, which should be marked by monuments of stone and mortar, ordering, as I order, the constitutional alcaldes, who are now or will hereafter be acting at the post of Tubac, not to allow the said claimant or his successors to be molested or in any way disturbed in the use and enjoyment of said land, but they shall protect the use and property of the same in the quiet enjoyment of it, in which terms I have ordered and I now order the present title of grant and confirmation in favor of Don Leon Herreros and his successors, previous note of which being taken in the corresponding book, the original shall be delivered to the claimant for his protection and use as proprietor owner in fee and only possessor of said land.

Given in the city of "El Fuertes" on the 15th of May, 1825. Authorized and signed with my hand and sealed with the seal of the "comisario" before witnesses in default of secretary.

JUAN MIGUEL RIESGO.

Assistant: JOSE MA. MENDOZA.

Assistant: ANTONIO APOLATEGUI.

Note of this title take on page 3 of Book No. 2 in this "general comisaria."

That the claimant under said grant filed, on December 29, 1879, in the office of the United States surveyor general for the Territory of Arizona, under the provisions of the acts of Congress of July 22, 1854, and July 15, 1870, a petition for the confirmation of said grant, accompanying which was the testimonio of same, the trans-

lation of which is hereinbefore set out, but that said petition or grant was never acted on by Congress, and that at the time of the institution of this suit no proceedings for the confirmation of said grant were pending before any surveyor general of the United States, or before Congress, or before the court of private land claims created under the provisions of the act of Congress of March 3, 1891.

III.

That prior to the commencement of this action certain persons, to wit, John Day, now deceased; Robert V. Bloxton, Henry Brenick, Francis Day, Thomas Driscoll, William Van Ness, William S. Fleming, Christian Foster, William Green, Edward Lambley, Jacob A. Linder, Timothy S. Lambertson, John Mansfield, Frederick Marsh, R. R. Richardson, George W. Stevens, D. A. Sanford, and C. C. Watkins, had entered upon land within the limits of the said grant, which plaintiff claims, as pre-emption or homestead settlers, claiming said lands to be public lands of the United States; that thereafter and before the commencement of this action, by condemnation proceedings against and sundry mesne conveyances from said persons, the defendant acquired and now claims a right of way through said several tracts of land so settled upon, which right of way is within the limits of said grant.

24

IV.

That this statement of facts is for the purpose of this suit only, and nothing hereing agreed upon shall be taken as admitted for or against either of the parties hereto in any other proceeding whatever.

Tucson, Arizona, May 29, 1893.

S. M. FRANKLIN,
ROCHESTER FORD,
Attorneys for Plaintiff.
WILLIAM HERRING,
Attorney for Defendant.

Endorsed: Filed June 5, 1893. Brewster Cameron, clerk, by Charles Bowman, D. C.

Tucson, Arizona, May 29, 1893.

The foregoing statement of facts agreed upon by counsel for both parties hereto is hereby certified as correct.

RICHARD E. SLOAN, *Judge.*

June 8, 1893.

25

(*Minute Entry, June 3, 1893.*)

(*Title of Court and Cause.*)

Come now all the parties hereto, by their respective counsel, and it appearing to the court from the pleadings and agreed statement

of facts filed by counsel herein that the court has no jurisdiction herein because plaintiff claims title under a certain Spanish or Mexican grant which has not been confirmed by Congress, the said complaint and action are dismissed at plaintiff's cost for want of jurisdiction; to which ruling of the court plaintiff, by his counsel, then and there instantly excepts. (Book J, page 223.)

(Minute Entry, Same Date.)

(Title of Court and Cause.)

The plaintiff herein having this day filed his motion for a new trial herein in this cause, and said motion being now fully submitted to the court, and the court, being fully advised in the premises, does deny and overrule said motion; to which ruling of the court the plaintiff excepts and gives notice of appeal to the supreme court from said order and ruling of the court. (Book J, page 224.)

26 In the District Court of the First Judicial District of the Territory of Arizona in and for the County of Pima.

SANTIAGO AINSA, Administrator, with the Will Annexed, of Frank Ely, Deceased, Plaintiff,

vs.

THE NEW MEXICO AND ARIZONA RAILROAD COMPANY, Defendant.

Motion for a New Trial.

Now comes the above-named plaintiff and moves the court to vacate and set aside the judgment in this action and grant a new trial of said action for the following grounds:

I.

Because the judgment and decision are contrary to the evidence.

II.

Because the judgment and decision are contrary to the law.

III.

Because the court erred in dismissing plaintiff's complaint in this action for want of jurisdiction.

S. M. FRANKLIN,
ROCHESTER FORD,
Attorneys for Plaintiff.

Endorsed: Filed June 3, 1893. Brewster Cameron, clerk, by Charles Bowman, D. C.

27

(Title of Court and Cause.)

This cause having been heard before the court upon the pleadings and agreed statement of facts filed in this cause, and the court hav-

ing considered the same and having heard Messrs. S. M. Franklin and Rochester Ford, for the plaintiff, and William Herring, Esq., for the defendant, and being now fully advised in the premises, finds that plaintiff claims title under a certain Spanish or Mexican grant which has not been confirmed by Congress, and that the court has no jurisdiction therein.

It is therefore considered and adjudged by the court that the plaintiff's complaint and action in this case be dismissed, and that defendant, The New Mexico and Arizona Railroad Company, a corporation, do have and recover from the plaintiff the sum of fifty cents as and for its costs of suit, to be taxed.

Dated Tucson, Arizona, June 6, 1893.

RICHARD E. SLOAN, *Judge.*

(Endorsed :) Filed June 6, 1893. Brewster Cameron, clerk, by Charles Bowman, deputy cl'k.

28 In the District Court of the First Judicial District of the Territory of Arizona in and for the County of Pima.

SANTIAGO AINSA, Administrator, with the Will Annexed, of Frank Ely, Deceased, Plaintiff,

vs.

THE NEW MEXICO AND ARIZONA RAILROAD COMPANY, Defendant.

Be it remembered that this action came on to be heard in said court on the 3rd day of June, A. D. 1893, and the court having fully considered the agreed statement of facts filed by counsel herein and all the parties hereto being present by their respective counsel, the court doth order and adjudge that the complaint and action be dismissed at plaintiff's costs for want of jurisdiction; to which ruling of the court the plaintiff, by his counsel, then and there instantly excepted, and, having reduced his exception to writing, plaintiff, on this 3rd day of June, 1893, the same being one of the days of the May term of said court and being within ten days of the conclusion of the trial, presents this his bill of exceptions to the judge of said court, praying that the same be by said judge allowed and signed and made a part of the record in this cause; and I, the judge of said court, having submitted such bill of exceptions to the counsel for the defendant in said action and the said bill of exceptions being found to be correct, it is thereupon, on said 3rd day of June, 1893, allowed and signed by me, the said judge, and the same is hereby ordered filed with the clerk of said court.

29

RICHARD E. SLOAN, *Judge.*

Approved:

WILLIAM HERRING,

Attorney for Defendant.

Endorsed: Filed June 3, 1893. Brewster Cameron, clerk, by C. Bowman, deputy clerk.

30 In the District Court of the First Judicial District of the Territory of Arizona in and for the County of Pima.

SANTIAGO AINSA, Administrator, with the Will Annexed, of Frank Ely, Deceased, Plaintiff,

vs.

THE NEW MEXICO AND ARIZONA RAILROAD COMPANY, Defendant.

Be it remembered that this action came on to be heard in said court on the 3rd day of June, 1893, on plaintiff's motion to set aside the judgment rendered therein, dismissing the complaint and action therein, and to grant a new trial of said action; which motion was in the words and figures following, to wit:

In the District Court of the First Judicial District of the Territory of Arizona in and for the County of Pima.

SANTIAGO AINSA, Administrator, with the Will Annexed, of Frank Ely, Deceased, Plaintiff,

vs.

THE NEW MEXICO AND ARIZONA RAILROAD COMPANY, Defendant.

31 *Motion for a New Trial.*

Now comes the above-named plaintiff and moves the court to vacate and set aside the judgment in this action and grant a new trial of said action for the following grounds:

I.

Because the judgment and decision are contrary to the evidence.

II.

Because the judgment are contrary to the law.

III.

Because the court erred in dismissing plaintiff's complaint in this action for want of jurisdiction.

S. M. FRANKLIN AND
ROCHESTER FORD,
Attorneys for Plaintiff.

Endorsed: Filed June 3, 1893. Brewster Cameron, clerk, by C. Bowman, deputy clerk.

32 And the court, having heard the motion, overruled the same; to which ruling of the court plaintiff, by his counsel, then and there instantly excepted, and, having reduced his exceptions to writing, plaintiff, on this 3d day of June, 1893, the same being one of the days of the May term of said court and being within ten days after the conclusion of the trial, presents this his bill of exceptions to the judge of said court, praying that the same be by said judge allowed

and signed and made a part of the record in this cause; and I, the judge of said court, having submitted such bill to the counsel for the defendant in said action and the said bill of exceptions being found to be correct, it is thereupon, on said 3d day of June, 1893, allowed and signed by me, the said judge, and the same is hereby ordered filed with the clerk of said court.

RICHARD E. SLOAN, *Judge.*

Approved:

WILLIAM HERRING,

Attorney for Defendant.

Endorsed: Filed June 3, 1893. Brewster Cameron, clerk, by C. Bowman, deputy clerk.

33 In the District Court of the First Judicial District of the Territory of Arizona in and for the County of Pima.

SANTIAGO AINSA, Administrator, with the Will Annexed, of Frank Ely, Deceased, Plaintiff,

vs.

THE NEW MEXICO AND ARIZONA RAILROAD COMPANY, a Corporation, Defendant.

Assignment of Errors.

I.

That the judgment and decree of the district court is contrary to the agreed statement of facts herein in this, that it appeared from such agreed statement of facts that the defendant had no estate, title, or interest in the lands described in the complaint, and that the plaintiff is the owner in fee thereof.

II.

The court erred in dismissing the complaint in this action and in not rendering its judgment and decree in favor of the plaintiff and against the defendant, as prayed for in said complaint.

III.

The judgment and decree of the district court is against the law.

IV.

The court erred in denying plaintiff's motion for a new trial.

34

S. M. FRANKLIN,
ROCHESTER FORD,
Attorneys for Plaintiff.

Endorsed: Filed June 8, 1893. Brewster Cameron, clerk, by Chas. Bowman, deputy clerk.

37 In the Supreme Court, Territory of Arizona, January Term,
1894.

MONDAY, *January 29th.*

The court met at 2 o'clock p. m.

Present :

His honor Albert C. Baker, chief justice.

" Richard E. Sloan, associate justice.

" John J. Hawkins, " "

" Owen T. Rouse, " "

Clerk J. L. B. Alexander.

Court Crier J. F. Briggs.

United States marshal, by his deputy, Ed. Metcalf.

The following causes were considered and acted upon :

SANTIAGO AINSA, Administrator, with Will Annexed, of Frank Ely, Deceased, Appellant,	} No. 376.
<i>vs.</i> THE NEW MEXICO AND ARIZONA RAILROAD CO., a Corporation, Appellee.	

This cause having been submitted and by the court taken under consideration, and the court having fully considered the same and being fully advised in the premises, it is ordered that the judgment of the lower court be, and the same is hereby, affirmed with costs.

38 It is ordered that the court stand adjourned until tomorrow at 2 o'clock p. m., January 30th, 1894.

A. C. BAKER,
Chief Justice.

39 In the Supreme Court of the Territory of Arizona, January Term, 1894.

SANTIAGO AINSA, Adin'r, etc., of Frank Ely, Deceased, Appellant,	} No. 376.
<i>vs.</i> THE NEW MEXICO AND ARIZONA RAILROAD COMPANY, a Corporation, Appellee.	

Appeal from the district court, Pima county. Hon. Richard E. Sloan, judge. Affirmed.

Mr. Rochester Ford and Mr. Selim M. Franklin for appellant.
Mr. William Herring for appellee.

Opinion by HAWKINS, A. J. :

This was an action filed in the district court of the first judicial district of the Territory of Arizona in and for the county of Pima on the 1st day of June, 1892, to quiet the plaintiff's title to a certain tract of land described in the complaint, known as and called the Rancho San Jose De Sonoita, situate in the Sonoita valley, in Pima

county, Arizona Territory, plaintiff's decedent claiming under a Mexican grant to Don Leon Herreros, dated May 25th, 1825.

40 Defendant claims a right of way through said premises by virtue of certain mesne conveyances from certain persons who had settled on portions of the lands conveyed by said grant, claiming same to be public lands of the United States.

The cause was submitted to the court below on an agreed statement of facts showing (1) the copy of the grant papers and admitting that the same was made, executed, and delivered to the grantee named therein and by the persons and officials when, where, and by whom it purports to have been signed, made, executed, and delivered, and that the plaintiff (appellant) herein is the vendee and assignee of and has acquired all the right, title, and interest of the original grantee thereof. (2.) That claimant under said grant filed on December 29th, 1879, under acts of Congress of July 22d, 1854, and July 15th, 1870, a petition for the confirmation of said grant; that said petition was never acted upon by Congress, and that at the institution of this suit no proceedings for the confirmation of said grant were pending before any surveyor general of the United States or before Congress or before the court of private land claims created by act of Congress of March 3d, 1891.

(3.) That prior to this action certain persons had entered upon land within the limits of plaintiff's grant as pre-emptions or homestead settlers, claiming said lands to be public lands of the United States; that thereafter and before the commencement of this suit, by condemnation proceedings against and sundry mesne conveyances from said persons, the defendant acquired and now
41 claims a right of way through said several tracts of land so settled upon, which right of way is within the limits of the said grant.

And the court held that it had no jurisdiction of the subject-matter of said suit and dismissed plaintiff's complaint.

The record shows that the Mexican grant claimed by plaintiff had not been confirmed by Congress. The question for us to consider seems to be, Can a private claim to land in Arizona under an unconfirmed Mexican land grant be contested in the local courts of justice where no proceedings are pending before Congress, surveyor general of the United States, or the private land court of March 3d, 1891?

Astiazaran v. Santa Rita Land and Mining Company, 148 U. S., p. 80, settles the question that no such action could be maintained if the claim had been reported to Congress by the surveyor general if commenced before Congress had acted thereon.

But appellant contends that under the Gadsden treaty complete or perfect titles to land needed no legislative confirmation and the owners of such titles may assert them in the ordinary forms of law upon the documents under which they claim, and cites numerous authorities to support said position, all of which seem to us to be under different treaties and where Congress had given the courts certain jurisdiction.

42 Appellant also contends that the grant under which he claims is a complete and perfect title and vested the fee in the grantee.

Who is to decide this question? Under the treaty Congress seems to have reserved this right to itself. It provided a mode of settling the property rights of claimants of these grants by acts of July 22, 1854, and July 15, 1870, and since by the act of March 3, 1891, 26 Statute at Large, 854.

It was the duty of Congress under the treaty to protect these rights. It could do so itself or delegate the power to the judicial department.

Batteller v. Domingues, 130 U. S., 238, and numerous cases therein reviewed.

In the case of grants in the State of California this was done by Congress delegating its power to commissioners by act of March 3, 1851. In New Mexico and Arizona Congress reserved to itself the determination of such claims, par. 8, 10 Statute, 309, 16 Statutes, 304, until it provided act of March 3rd, 1891, 26 Stat., 854.

Appellant wants us to consider his grant as being under the provisions of sec. 8 or, rather, of the first paragraph of sec. 8 of the last-mentioned act—that is, one that was complete and perfect when the U. S. acquired sovereignty, and not under section 6 of said act. Suppose we should do so and order the title quieted and some of the settlers thereon should get the Attorney General to commence an action in the land court against the owner of the grant under said section 8, and that court should hold said grant of no avail, then of what force would our decree be?

43 Congress in providing a remedy for settling these disputed titles has nowhere delegated any authority to these courts to settle same. It has reserved to itself the power of settling such titles, and has delegated its power to the land court.

It is not our province to usurp the functions of the "political department" of the Government (*Decroix v. Chambers*, 12 Wheat., 602) or of its delegate, the private land court. After proper confirmation either by Congress or its land court we could grant the relief asked, and not till then. Why should we treat this grant as valid when it appears from the agreed statement of facts that the executive department has heretofore allowed homestead and pre-emption claimants to enter land embraced therein?

Are we to say that department has been violating a treaty of the United States with Mexico? It was for Congress to pass laws for the enforcement of these treaties with Mexico. It has repeatedly done so. Acts July 22, 1854, 10 Stat., 309; July 15, 1870, 16 Stat., 304; commissioners' act 1851 to settle such titles in California, and, finally, act of March 3rd, 1891, 26 Stat., 854.

If, as the appellant contends, the acts of 1854 and 1870 were repealed by act of March 3rd, 1891, still this last act does not authorize us to settle the title to Mexican land grants. He may still apply to Congress if he does not want to apply to the land court. Congress

must in some way confirm this class of Mexican grants before we have jurisdiction thereof.

Boteller v. Domingues, 130 U. S., 238.

44 We must recognize and take judicial notice of the acts of the executive department of the Government in allowing the entry of homesteads and pre-emptions in preference to the unconfirmed title of a Mexican land grant.

The judgment is affirmed.

January 29th, 1894.

JNO. J. HAWKINS,
Associate Justice.

We concur.

A. C. BAKER, *C. J.*

OWEN T. ROUSE, *A. J.*

Endorsed : Filed January 29, 1894. J. L. B. Alexander, clerk.

45 In the Supreme Court of the Territory of Arizona.

SANTIAGO AINSA, Administrator, with Will Annexed, of Frank Ely, Deceased, Plaintiff and Appellant,

vs.

THE NEW MEXICO AND ARIZONA RAILROAD COMPANY, a Corporation, Defendant and Appellee.

Finding of Fact.

In the above-entitled cause the court finds the records to be the same as found by the lower court and as appears in the record of this cause on file herein, and the said findings are hereby adopted as the findings of this court herein.

Done in open court this 30th day of January, A. D. 1894.

A. C. BAKER,
Chief Justice of the Supreme Court of Arizona.

(Endorsed :) Filed February 10th, 1894. J. L. B. Alexander, clerk.

46 In the Supreme Court of the Territory of Arizona.

SANTIAGO AINSA, Administrator, with Will Annexed, of Frank Ely, Deceased, Plaintiff and Appellant,

vs.

THE NEW MEXICO AND ARIZONA RAILROAD COMPANY, a Corporation, Defendant and Appellee.

Application for an Appeal.

The above-named plaintiff and appellant, conceiving himself aggrieved by the final judgment entered on the 29th day of January, A. D. 1894, in the above-entitled action and court against him

and in favor of the New Mexico and Arizona Railroad Company, a corporation, does hereby appeal therefrom to the Supreme Court of the United States, and he prays that his appeal may be allowed, and that a citation be duly signed and issued, and that a transcript of the record, proceedings, opinion, judgment, and evidence in the case, duly authenticated, may be sent to the Supreme Court of the United States.

ROCHESTER FORD,

Attorney for Plaintiff and Appellant.

And now, to wit, on the 30th day of January, A. D. 1894, being
 47 a day of the same term at which the aforesaid judgment was rendered against appellant, the above application having been presented and fully considered, it is ordered that the appeal be allowed as prayed for, and the same is hereby allowed upon the filing of a bond for costs in the sum of five hundred dollars.

A. C. BAKER,

Chief Justice of the Supreme Court of Arizona.

(Endorsed :) Filed February 10th, 1894. J. L. B. Alexander, clerk.

48 In the Supreme Court of the Territory of Arizona.

SANTIAGO AINSA, Administrator, with Will Annexed, of Frank Ely, Deceased, Plaintiff and Appellant,	}
<i>vs.</i>	
THE NEW MEXICO AND ARIZONA RAILROAD COMPANY, a Corporation, Defendant and Appellee.	}

Affidavits of Value.

S. M. Franklin and Rochester Ford being duly sworn, each for himself say that they are the attorneys for the plaintiff and appellant in the above-entitled action; that they are personally acquainted with that certain piece or parcel of land situate in Pima county, Territory of Arizona, known and called the San Jose de Sonoita rancho or grant and are personally with the portions of said San Jose de Sonoita rancho or grant claimed by defendants as set up in their answers in this cause, and affiants further say that the said San Jose de Sonoita rancho or grant is worth more than the sum of five thousand dollars, exclusive of costs, and that the said portions thereof so claimed by defendants are worth more than the sum of five thousand dollars, exclusive of costs, and that the matter in this action, exclusive of costs, exceeds the sum of five thousand dollars.

49

S. M. FRANKLIN.
 ROCHESTER FORD.

[SEAL.] Subscribed and sworn to before me, at Tucson, Arizona Territory, this 7th day of February, A. D. 1894.

B. W. TICHENOR,
Notary Public, Pima Co., A. T.

(Endorsed :) Filed February 10th, 1894. J. L. B. Alexander, clerk.

50 In the Supreme Court of the Territory of Arizona.

SANTIAGO AINSA, Administrator, with Will Annexed, of Frank Ely, Deceased, Plaintiff and Appellant,

vs.

THE NEW MEXICO AND ARIZONA RAILROAD COMPANY, a Corporation, Defendant and Appellee.

Know all men by these presents that we, Santiago Ainsa, as administrator, with will annexed, of Frank Ely, deceased, as principal, and Rochester Ford and Ben. Heney, all of the city of Tucson, Territory of Arizona, as sureties, are held and firmly bound unto the New Mexico and Arizona Railroad Company, a corporation, in the sum of five hundred dollars; for the payment of which sum, well and truly to be paid, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 7th day of February, A. D. 1894.

Whereas the above-named Santiago Ainsa, administrator, with will annexed, of Frank Ely, deceased, has taken an appeal to the Supreme Court of the United States to reverse the judgment and decree rendered in the above-entitled action by the supreme court of the Territory of Arizona:

Now, therefore, the condition of this obligation is such that
51 if the above-named Santiago Ainsa, administrator, with will annexed, of Frank Ely, deceased, shall prosecute his said appeal to effect and answer all costs if he shall fail to make said appeal good, then this obligation shall be void; otherwise to be and remain in full force and virtue.

SANTIAGO AINSA,
Administrator, with Will Annexed, of
Frank Ely, Deceased.
ROCHESTER FORD.
BEN. HENEY.

[SEAL.]
[SEAL.]
[SEAL.]

TERRITORY OF ARIZONA, }
County of Pima, } ss:

Rochester Ford and Ben. Heney being duly sworn, each for himself makes oath and says that they are the persons named in and who executed the foregoing obligation; that they are and each of them is a resident and householder of the said county and Territory, and that each is worth at least the sum of five hundred dollars

ROCHESTER FORD.
BEN. HENEY.

52 Subscribed and sworn to before me, at Tucson, Arizona Territory, this 7th day of February, A. D. 1894.

B. W. TICHENOR,
Notary Public, Pima Co., A. T.

The within bond is hereby approved this the 10th day of February, A. D. 1894.

A. C. BAKER,
Chief Justice of the Supreme Court of Arizona.

(Endorsed:) Filed February 10, 1894. J. L. B. Alexander, clerk.

53 In the Supreme Court of the United States.

SANTIAGO AINSA, Administrator, with Will Annexed, of Frank Ely, Deceased, Plaintiff and Appellant,
vs.
 THE NEW MEXICO AND ARIZONA RAILROAD COMPANY, a Corporation, Defendant and Appellee.

Assignment of Errors on Appeal.

I.

That the judgment and decree are contrary to the agreed statement of facts in this, that it appears from such agreed statement that the grant under which plaintiff claims title is a complete and genuine and perfect title in fee needing no confirmation, and that no proceedings for its confirmation were pending before any tribunal, and that all the lands embraced with- said grant, including the lands claimed by defendant, are private property of plaintiff.

II.

The court erred in dismissing the complaint in this action on the ground that it had no jurisdiction thereof and in not rendering its judgment and decree in favor of the plaintiff and against the defendant, as prayed for in said complaint.

54 III.

The judgment and decree are against the law.

IV.

The court erred in overruling plaintiff's motion for a new trial, for the reasons therein stated.

S. M. FRANKLIN,
ROCHESTER FORD,
Attorneys for Plaintiff and Appellant.

(Endorsed:) Filed February 10th, 1894. J. L. B. Alexander, clerk.

55 In the Supreme Court of the United States.

SANTIAGO AINSA, Administrator, with Will Annexed, of Frank Ely, Deceased, Plaintiff and Appellant,
vs.
THE NEW MEXICO AND ARIZONA RAILROAD COMPANY, a Corporation, Defendant and Appellee.

UNITED STATES OF AMERICA, ss:

To the New Mexico and Arizona Railroad Company, a corporation,
Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, District of Columbia, on the second Monday of October, eighteen hundred and ninety-four, pursuant to an appeal filed in the clerk's office of the supreme court of the Territory of Arizona, wherein Santiago Ainsa, administrator, with will annexed, of Frank Ely, deceased, is appellant and The New Mexico and Arizona Railroad Company, a corporation, is appellee, to show cause, if any there be, why the judgment in the said appeal mentioned should not be corrected and speedy justice should not be done to the parties on that behalf.

Witness the Hon. Melville W. Fuller, Chief Justice of the United States, this 10 day of February, A. D. 1894.

[Seal Supreme Court of Arizona.]

A. C. BAKER,
Chief Justice of the Supreme Court of Arizona.

Attest: J. L. B. ALEXANDER, *Clerk.*

Due and legal service of the within citation acknowledged this 16th day of February, 1894.

WILLIAM HERRING,
*Attorney for the New Mexico and Arizona
R. R. Co., a Corporation.*

[Endorsed:] No. 376. United States Supreme Court. Santiago Ainsa, adm'r, etc., appellant, vs. The N. M. & A. R. R. Co., appellee. Citation. Filed Feb'y 26th, 1894. J. L. B. Alexander, clerk. S. M. Franklin, Rochester Ford, attorneys for appellant.

56 In the Supreme Court of the Territory of Arizona.

SANTIAGO AINSA, Administrator, with Will Annexed, of Frank Ely, Deceased, Plaintiff and Appellant,

vs.

THE NEW MEXICO AND ARIZONA RAILROAD COMPANY, a Corporation, Defendant and Appellee.

To William Herring, Esq., attorney for defendant and appellee:

You will please take notice that we have taken an appeal from the judgment of the supreme court of the Territory of Arizona in the above-entitled action: to the Supreme Court of the United States, and that we have filed the affidavits of S. M. Franklin and Rochester Ford with the supreme court of the Territory of Arizona, to the effect that the matter in dispute exceeds in value the sum of five thousand dollars, exclusive of costs.

S. M. FRANKLIN,
ROCHESTER FORD,
Attorneys for Plaintiff and Appellant.

Service of copy of the within notice acknowledged this 16th day of February, A. D. 1894.

WILLIAM HERRING,
Attorney for N. M. & A. R. R. Co.

[Endorsed:] No. 376. Santiago Ainsa, adm'r, etc., appellant, vs. The N. M. & A. R. R. Co. Notice. Filed Feb'y 26th, 1894. J. L. B. Alexander, clerk. S. M. Franklin, Rochester Ford, attorneys for appellant.

57 UNITED STATES OF AMERICA, } ss:
Territory of Arizona,

I, J. L. B. Alexander, clerk of the supreme court of the Territory of Arizona, do hereby certify that the above and foregoing is a full, true, and correct transcript and copy of the record and proceedings in the cause entitled Santiago Ainsa, administrator, with will annexed, of Frank Ely, deceased, appellant, against The New Mexico and Arizona Railroad Company, a corporation, appellee, as the same appears of record and on file in my office; also that the citation herewith and hereunto attached is the original citation issued by said supreme court of the Territory of Arizona.

In witness whereof I have hereunto set my hand and affixed the official seal of said supreme court, this 14th day of March, A. D. 1894, at Phoenix, Arizona.

[Seal Supreme Court of Arizona.]

J. L. B. ALEXANDER, *Clerk.*

Endorsed on cover: Case No. 15,540. Arizona Territory supreme court. Term No., 350. Santiago Ainsa, administrator, with will annexed, of Frank Ely, deceased, appellant, vs. The New Mexico & Arizona Railroad Company. Filed March 26th, 1894.